Opinion on the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions

The text referred to the Committee was published in *Official Journal of the European Communities* No C 12 of 17 January 1975, page 7.

A. LEGAL BASIS FOR THE OPINION

On 6 January 1975, the Council referred the abovementioned proposal to the Economic and Social Committee under Article 198 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee drew up its Opinion at its 130th plenary session, held in Brussels on 28 and 29 May 1975.

The Opinion is published below.

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the referral on 7 January 1975 by the Council of the European Communities, of the proposal for a Council Directive on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions;

Having regard to Article 198 of the Treaty establishing the European Economic Community;

Having regard to the decision taken by its Bureau on 28 January 1975, instructing the Section for Industry, Commerce, Crafts and Services to draw up an Opinion and a report on the matter;

Having regard to the Opinion adopted by the Section for Industry, Commerce, Crafts and Services at its meeting on 7 May 1975;

Having regard to the report submitted by the Rapporteur, Mr de Bruyn;

Having regard to the discussions at its meeting on 28 May 1975 (130th plenary session of 28 and 29 May 1975),

HAS ADOPTED THE FOLLOWING OPINION

by a unanimous vote:

1. General comments

1.1. *The need for harmonization*

1.1.1. The Committee is aware of the pressing need for substantial harmonization of the laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions. Already, any national of a Member State has the right, under the Council Directive of 28 June 1973 and the judgments of the Court of Justice, to set up in business or to provide services in any other Member State under the same conditions and with the same rights as apply to a national of that State; he may not be subjected to discriminatory treatment by comparison with that accorded to nationals.

1.1.2. In reality, however, creation of a true common market for credit institutions is hampered by the multiplicity of widely differing and complex provisions governing these institutions in the various Member States.

1.1.3. This situation is at variance with the fundamental aims of the Treaty: it represents an obstacle to the achievement of economic and monetary union, and it is incompatible with the principle of free competition. At a time when freedom of establishment and freedom to provide services have become definite rights, not only in the fields covered by the Directive of 28 June 1973, but perhaps more widely by virtue of the judgments of the Court of Justice, the lack of harmonization of Member States' legislation, whose main purpose in each country is to provide security for depositors and to protect savings, is liable to create serious disparities with regard to this objective, indeed even certain dangers.

1.2. *The procedure adopted by the Commission*

1.2.1. The Committee notes that in view of the difficulties which the harmonization involves, the Commission has decided to proceed with it in stages. The Committee regrets that the proposal submitted as the first stage of the operation is not more substantial and finds it a pity that the Commission, as is recognized in the explanatory memorandum, abandoned the idea of coordinating all major aspects of banking legislation in a single directive.

1.2.2. The Committee would therefore urge the Commission to press resolutely ahead until the goal of harmonization is achieved by quickly following this proposal up with proposals for the other directives.

1.3. *Definition of the concept of credit institutions*

1.3.1. The aim in view calls for as wide a definition of credit institutions as possible. The Committee therefore considers that the definition proposed is in principle too narrow.

1.3.2. However, the definition is only intended to demarcate the field of application of this first directive and not that of all subsequent directives on the subject; it therefore in no way anticipates the provisions which will lay down the field of application of future directives. Therefore, in view of the procedure adopted by the Commission and the attitude the Committee has taken towards it, the Committee is prepared to agree to the question being left open and to accept the proposed definition provisionally.

1.3.3. The Committee feels, however, that the question should be reviewed during discussion of the very next directive.

1.3.4. The Committee considers that this review must result in extension of the field of application. Such an extension is all the more justified because of the urgency of harmonization, since it has been precisely the lack of prior harmonization which has prevented the liberalization provided for by the Directive of 28 June 1973 taking effect. The Directive achieved only a very partial liberalization because harmonization had not been carried out beforehand. Today, however, by virtue of the judgments of the Court of Justice, liberalization could well extend further than is provided for in the 1973 Directive and apply effectively to areas which it was not throught possible to liberalize in the absence of prior harmonization. The judgments of the Court of Justice would thus mean liberalization of fields which it was not at the time thought possible, chiefly because of the dangers involved, to liberalize before having harmonized the legislation governing them.

1.3.5. Finally, since in the Committee's view it is important to avoid any discrepancy between directives covering the same business activities, the requested review, i.e. extension, of the field of application should be made applicable also to the present directive.

1.4. *Authorization procedure*

1.4.1. The ultimate aim is to harmonize the authorization requirements for financial institutions in all the Member States.

1.4.2. It is therefore regrettable that the Commission has distinctly lowered its sights, confining itself to specifying only two common authorization criteria, and — contrary to the basic principle of harmonization — leaving it to the Member States to lay down the general conditions of authorization, subject to their being notified to the Commission.

1.4.3. As regards the nature of the authorization requirements in the various Member States, the Committee is disquieted by the fact that some of these requirements could be discretionary, arbitrary or discriminatory. It urges that a complete inventory of such requirements be drawn up and that steps be taken as a matter of priority towards doing away with such of them as do not represent objective criteria which are known beforehand and capable of providing a basis for the joint discussion of applications and leading to a reasoned decision based on these criteria.

1.5. *Provisions governing the establishment of branches in other Member States*

1.5.1. It is particularly with regard to the establishment of branches in other Member Sates that the deficiencies of the procedure adopted by the Commission are very apparent. A basic feature of a genuine common market for credit institutions must be that credit institutions can carry on business freely in other Member States, both without establishment or through branches established freely in the host country. Regarding this last point, the ultimate aim is, as is quite rightly stated in one of the recitals, to introduce 'a system whereby branches of an undertaking which is established in a Member State will throughout the Community be subject to no authorization requirement'.

1.5.2. The absence of harmonization of authorization procedures, as well as of supervision arrangements, has led to a solution being adopted in respect of branches in the present proposal for a Directive which bears no relation at all to the declared aim. The Committee of course understands that without fuller harmonization this aim is unattainable, but it would take this opportunity to reiterate the — in its eyes — insufficiently substantial character of the proposed Directive and to stress the need to press resolutely ahead with this work.

1.6. *Creation of a contact committee*

1.6.1. In order to expedite and facilitate the harmonization, the Commission is to set up under it a committee composed of representatives of supervisory authorities of each Member State.

1.6.2. The Committee fully supports the Commission in its wish to have the benefit of the opinions and suggestions of such a committee, provided — and an analysis of the text shows this to be the case — that the Commission retains the exclusive right of initiative and decision-making assigned to it by the Treaty.

1.7. *Conclusion*

1.7.1. To conclude these general comments, the Committee would say that bearing in mind the difficulties involved in the venture and notwithstanding the criticisms made above and the specific comments to be made below, it is desirable that a step forward, however limited, be taken right away. It therefore gives its support to the proposal.

2. Specific comments

2.1. *Article 1*

2.1.1. It emerged from a discussion which took place on the definition of the term 'branch' that a place of business which only receives moneys without granting credits, or vice-versa, would not be excluded from the field of application of the Directive.

2.1.2. The Committee therefore proposes that the definition be amended to read:

> '"Branch" means a place of business which forms a legally dependent part of a credit institution and which conducts directly any of the operations inherent in the business referred to above.'

2.2. *Article 2 (2)*

2.2.1. It is inconceivable that not every credit institution covered by the narrow definition given in the proposed Directive should be subject to the Directive. Apart from the central banks, which participate in monetary management, all the other institutions listed, including Post Office giro institutions, should be omitted from the text.

2.2.2. The Committee therefore proposes that Article 2 (2) be amended to read:

> '2. It does not apply to the central banks of Member States.'

2.3. *Article 2 (3 and 4)*

2.3.1. It is stated that Member States may defer, for two years, the application of the Directive to certain types or groups of credit institutions; such deferment should not be renewable.

2.3.2. The Committee therefore proposes that Article 2 (4) be amended to read:

> '4. The deferment of application under paragraph 3 above shall be motivated and notified to the Commission by the Member State in question. Deferment shall be for a maximum period of two years. It shall take effect as from its publication in the *Official Journal of the European Communities,* which shall be effected not later than six months following notification of this Directive. It shall cease two years after that publication, unless the Member State in question notifies the Commission that it is ending the deferment of application before the expiry of the two-year period.'

2.4. *Article 3 (2), first indent*

2.4.1. It emerges from the commentary on Article 3 (2) first indent and Article 8 (1) (d) that the term 'own funds' is to be understood in a different sense in each case: in the first case it refers to the initial capital, in the second to 'operating capital', i.e. the permanent stock of funds required for the general running of the business of a credit institution.

2.4.2. The Committee considers that it would have been better to define these terms and specify the relevant amounts in the present proposal.

2.4.3. At all events, to remove the ambiguity referred to in 2.4.1 above, the Committee proposes that Article 3 (2) first indent be amended to read:

> '— the credit institution does not possess adequate initial capital.'

2.5. *Article 3 (4)*

2.5.1. In line with the general points already made under 1.4, the committee set up under Article 11 should be instructed to examine also all the requirements laid down by any of the Member States for authorization, and not just those listed by Article 3 (2).

2.6. *Article 4 (4), last sentence*

2.6.1. Independently of the comments made above (1.5) about the rules governing the establishment of branches in other Member States, the Committee considers that such a provision has no place in a directive on the coordination of laws, regulations and administrative provisions governing the commencement and carrying on of the business of credit institutions. It is discriminatory in that a Member State with restrictive rules could apply those rules to branches of institutions based in another Member State, while branches of institutions based in the former Member State would be able to benefit from the more liberal rules of that other Member State. The provision in question may lead to arbitrariness, especially if the Member State with restrictive rules were to apply authorization conditions which do not conform to the criteria set out above in item 1.4. Therefore, the Committee calls for deletion of the last sentence of Article 4 (4).

2.7. *Article 6*

2.7.1. Subject to the general comments made above and the specific comments below, the Committee feels that, in view of the procedure adopted by the Commission and the conclusion the Committee has reached about it, Article 6 of the proposal for a directive has to be approved.

2.7.2. The Committee considers that a rigorous definition of the various accounting elements used to compute ratios must be laid down as a matter of priority; failing this, it will never be possible to make any comparisons whatever.

2.7.3. The Committee feels that in subsequent stages it would be appropriate to set up a system of common ratios fixed exclusively by directives, but with delegation to the Commission of the power to fix the factors and the magnitude of the said ratios, after consulting the committees referred to in Article 11 and the last paragraph of the recitals.

2.7.4. With regard to the provision of Article 6 (2) requiring three-monthly notification of the ratios specified in Article 6 (1), the Committee considers that the institutions concerned should at least be given a reasonable amount of time to collect the data, make their calculations and send in the results to the competent authorities.

2.8. *Article 7 (2)*

2.8.1. It emerged from the discussion that Article 7 (2) does not imply a limitation on the right of Member States to supervise branches on the basis of ratios other than those specified in Article 6.

2.9. *Article 8 (1) (c)*

2.9.1. Although at the present stage of progress towards harmonization it seems impossible to require all Member States to abrogate those conditions of authorization which do not conform rigorously to the criteria defined above under 1.4.3, the Directive should at least completely preclude withdrawal of authorization on the ground that such a non-conforming condition is no longer fulfilled.

2.10. *Article 9 (1)*

2.10.1. The Committee proposes that Article 9 (1) be worded to read:

> 'Pending more intensive coordination of the laws, regulations and administrative provisions relating to branches of credit institutions having their head office outside the Community, Member States shall apply to such branches, in respect of the commencement or carrying on of their business, provisions which, at the very least, do not result in more favourable treatment than that accorded to branches of credit institutions of Member States.'

2.11. *Article 9 (2)*

2.11.1. It is primarily the Commission which the competent authorities should notify of branch authorization applications submitted to them by credit institutions having their head office outside the Community. Furthermore, the Member States should be required to inform the Commission of the action taken on such applications, and in particular of the conditions under which any authorizations have been granted.

2.12. *Article 9 (3)*

2.12.1. Article 9 (1) already allows Member States to treat the branches of institutions based outside the Community in the same way as those of institutions of Member States, and it is hard to see what else could be negotiated in the interest of Member State institutions.

2.12.2. At the very least, Article 9 (3) should say 'on the basis of the principle of reciprocity' and not use the ambiguous term 'having regard to the principle of reciprocity'.

2.13. *Article 11*

2.13.1. In line with the observations under 1.6, the Committee considers that it would be consistent to give the Commission the chair of the contact committee. At all events, the stipulations of Article 11 (2 and 3) on the representation of the Commission should be considered the strict minimum.

2.13.2. The Committee would like the committee referred to in Article 11 to be composed of top level officials of the supervisory authorities in the Member States.

2.13.3. The Committee calls for early establishment of the consultative committee referred to in the last recital of the preamble to the proposal.

2.13.4. The abovementioned committee would play a consultative role in both the preparation of decisions and the framing of their implementing procedures; here, too, the Commission's power of decision would remain absolutely intact.

2.13.5. Liaison between the consultative committee and the committee set up under Article 11 would be assured by the Commission which could, where it considered this useful, arrange for a member delegated by one or other of the two committees to assist it in this task or convene a meeting at which the committees would concert their views on specific matters.

2.13.6. In consequence of the foregoing the Committee proposes that the following amendments be made to the proposal for a Directive:

2.13.6.1. (Subsidiary amendment, in the event of the provision for renewal of deferment not being deleted)

Article 2 (4), second sentence

Replace '... the committee referred to in Article 11' by '... the committees referred to in Articles 11 and 11a'.

2.13.6.2. (Subsidiary amendment, for the same eventuality)

Article 2 (4), last sentence

Replace: '... the said committee' by '... the said committees'.

2.13.6.3. Article 6 (4)

Replace: '... the committee provided for in Article 11' by '... the committees provided for in Articles 11 and 11a'.

2.13.6.4. Add an Article 11a reading as follows:

'*Article 11a*.

1. There shall be set up alongside the Commission an advisory committee representing the professional circles concerned.

2. This committee shall be consulted:

(a) in the instances specified above;

(b) on the authorization requirements laid down by the competent authorities;

(c) on the establishment, enlargement, alteration or replacement of all ratios;

(d) on the methods to be used in calculating all ratios and the definitions to be given to the various elements;

(e) in connection with the preparation of new proposals to lay before the Council on further coordination in this field.

3. The Commission shall be responsible for implementation of the preceding provisions. It shall take appropriate measures to ensure the necessary liaison between this committee and that referred to in Article 11.'

2.14. *Article 12*

2.14.1. The Committee endorses the solution adopted by Article 12 (3), that is to say the stipulation that information communicated by a competent authority is subject to the obligation of professional secrecy laid down in respect thereof in the legislation applicable in the country of that authority, unless the authority gives express authorization in writing to divulge such information and is empowered to give such authorization by its national legislation.

Done at Brussels, 28 May 1975.

The Chairman
of the Economic and Social Committee

Henri CANONGE

Opinion on the Commission's memorandum to the Council entitled Programmes of research and development actions in the field of energy

The text referred to the Committee was published in *Official Journal of the European Communities* No C 54 of 6 March 1975, page 26.

A. LEGAL BASIS FOR THE OPINION

On 30 January 1975, the Council referred the abovementioned memorandum to the Economic and Social Committee under Article 198 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee drew up its Opinion at its 130th plenary session, held in Brussels on 28 and 29 May 1975.

The Opinion is published below.

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the referral on 3 February 1975 by the Council of the European Communities, of the Commission's memorandum to the Council entitled Programmes of research and development actions in the field of energy;

Having regard to the Treaty establishing the European Economic Community, and in particular Article 198 thereof;

Having regard to the decision taken by its Bureau on 28 January 1975, instructing the Section for Energy and Nuclear Questions to draw up an Opinion and a report on the matter;

Having regard to the Opinion adopted by the Section for Energy and Nuclear Questions at its meeting held on 12 May 1975;

Having regard to the report submitted by the Rapporteur, Mr Schlitt, at this meeting;

Having regard to the discussions at its meeting on 28 May 1975 (130th plenary session of 28 and 29 May 1975);

Whereas it is necessary to develop new energy sources and new forms of energy within the framework of a common energy policy;

Whereas a Community research and development programme must play a fundamental role in this context,

HAS ADOPTED THE FOLLOWING OPINION

unanimously, less one abstention:

1. General comments

1.1. In its Communication Energy for Europe: Research and Development, the Commission, as part of its long-term energy strategy, identified seven